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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/829,643

04/22/2004

Robert Andrew Gall

6963

22890

7590

11/07/2005

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EXAMINER

HOGUE, GARY CHAPMAN

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

10/829,643

Applicant(s)

GALL, ROBERT ANDREW

Examiner

Gary C. Hoge

Art Unit

3611

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 10-16.

Claim(s) withdrawn from consideration: 17-19.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

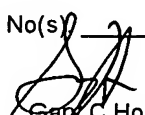
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) \_\_\_\_\_.

13. ☐ Other: \_\_\_\_\_.

  
 Gary C. Hoge  
 Primary Examiner  
 Art Unit: 3611

Continuation of 11. does NOT place the application in condition for allowance because: Applicant states that "The North Carolina DMV web site shown and cited herein was not published more than one year before the filing of the instant application." This is incorrect. Although the copy of the website that was cited by the examiner was in fact captured on June 20, 2003, it is nonetheless true that the content of that website was exactly, word-for-word the same on February 2, 2003, as shown on the version attached hereto. This proves that the information cited previously was, in fact, available to the public prior to April 20, 2003, and therefore, the North Carolina DMV website is a valid reference under 35 U.S.C. § 102(b). Note that it is the website itself, and not the paper copy of it supplied by the Examiner, that is the basis for the rejection.

Applicant states: There is no date shown on page 2" of the DMV reference. On the contrary, the website was accessed through the "Internet Archive" ([www.archive.org](http://www.archive.org)), which stores dated copies of websites. The date the website was archived is encoded into the URL that is printed at the bottom of the page. Note that in the version attached hereto, the date is "20030202091136," which means February 2, 2003, at 09:11:36 in the morning.

Applicant further states that "the DMV reference does not contemplate or even remotely suggest that the non-alphanumeric indicia be used for the purpose pointed out and claimed in the instant application." Even if true, this is irrelevant because the claims are apparatus claims, not method claims. The publicly-known existence of the claimed apparatus, one year prior to the filing of the instant application, is sufficient to reject the claims. The use intended by Applicant is irrelevant.

Finally, failure to conduct a personal interview, for whatever reason, is not a grounds for withdrawing the final rejection. Applicant has no right to an interview after a final rejection. Such interviews are always at the discretion of the examiner, and are normally only granted if the examiner is convinced that they will lead to allowance of the claims.